

Michael Fuller, OSB No. 09357

Lead Attorney for Plaintiffs
Olsen Daines PC
US Bancorp Tower
111 SW 5th Ave., Suite 3150
Portland, Oregon 97204
michael@underdoglawyer.com
Direct 503-201-4570

Mark Geragos, Pro Hac Pending

Ben Meiselas, Pro Hac Pending

Lori Feldman, Pro Hac Pending

Of Attorneys for Plaintiffs
Geragos & Geragos
Historic Engine Co. No. 28
644 South Figueroa Street
Los Angeles, California 90017
geragos@geragos.com
Phone 213-625-3900

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

**MICHELLE
VANDERZANDEN** and
JAMES CARLTON,
individually and on behalf of all
others,

Plaintiffs,

v.

SONIC CORPORATION,

Defendant.

Case No. 3:17-cv-1528

**CLASS ACTION
ALLEGATION COMPLAINT**

Negligence

28 U.S.C. § 1332

Demand for Jury Trial

1.

THE PARTIES

Sonic Corporation is a billion dollar fast-food restaurant chain and a Delaware corporation with over 3,500 locations in 44 states including Oregon and Washington.

2.

Michelle Vanderzanden is an individual consumer residing in the Portland, Oregon area who used a debit card to purchase fast-food at Sonic Corporation and later had her debit card information compromised by Sonic Corporation.

3.

James Carlson is an individual consumer residing in the Bellingham, Washington area who used a credit card to purchase fast-food at Sonic Corporation and later had his debit card information compromised by Sonic Corporation.

4.

JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 1332 because the parties are citizens of different states and the amount in controversy for the national class estimated at 5,000,000 consumers exceeds \$2.3 billion exclusive of penalties. Venue is proper under 28 U.S.C. § 1391

because the bulk of Oregon consumers with credit and debit card information stored by Sonic Corporation live in the Portland area.

5.

FACTUAL ALLEGATIONS

Plaintiffs file this complaint as a class action on behalf of an estimated 5,000,000 consumers harmed by Sonic Corporation's failure to adequately protect their credit and debit card information. This complaint requests Sonic Corporation provide fair compensation in an amount that will ensure every consumer harmed by its data breach will not be out-of-pocket for the costs of independent third-party credit repair and monitoring services. This complaint's allegations are based on personal knowledge as to plaintiffs' conduct and made on information and belief as to the acts of others.

6.

Throughout the past year, Sonic Corporation collected and stored credit and debit card information from plaintiffs at various point-of-sale systems in its restaurants.

7.

Sonic Corporation owed a legal duty to plaintiffs to use reasonable care to protect their credit and debit card information from unauthorized access by third parties. Sonic Corporation knew that its failure to protect plaintiffs' credit and debit card information from

unauthorized access would cause serious risks of credit harm and identify theft for years to come.

8.

On September 27, 2017, Sonic Corporation announced for the first time that its credit card processor had been hacked by unauthorized third parties, subjecting plaintiffs to credit harm and identify theft and other economic losses. Sonic Corporation unjustifiably failed to timely notify consumers of its data breach in the most expeditious manner possible, and only chose to notify consumers of its breach after hackers were caught attempting to sell its stolen information in underground cybercrime stores.

9.

In an attempt to increase profits, Sonic Corporation negligently failed to maintain adequate technological safeguards to protect plaintiffs' information from unauthorized access by hackers. Sonic Corporation knew and should have known that failure to maintain adequate technological safeguards would eventually result in a massive data breach. Sonic Corporation could have and should have substantially increased the amount of money it spent to protect against cyber-attacks but chose not to. Consumers should not have to bear the expense caused by Sonic Corporation's negligent failure to safeguard their credit and debit card information from cyber-attackers.

10.

As a direct result of Sonic Corporation's negligence as alleged in this complaint, plaintiffs suffered the actual loss of their credit and debit card information to hackers seeking to use their information for fraudulent illegal purposes. The economic losses Sonic Corporation caused consumers across the country could have been mitigated had Sonic Corporation notified them that their information was compromised in the most expeditious manner possible.

11.

CLASS ALLEGATIONS

Plaintiffs file this complaint as a national class action lawsuit.

The class consists of:

1. Consumers like plaintiffs who had credit and debit card information collected and stored by Sonic Corporation in the past year, and who were subject to risk of data loss and credit harm and identity theft as a result of Sonic Corporation's negligent data breach, and who could have prevented or mitigated their harm had Sonic Corporation notified them that their information was compromised in the most expeditious manner possible.

12.

Excluded from the class are all attorneys for the class, officers and members of Sonic Corporation, including officers and members of any entity with an ownership interest in Sonic Corporation, any judge who sits on the case, and all jurors and alternate jurors who sit on the case.

13.

The exact number of aggrieved consumers, estimated at 5,000,000, can be determined based on Sonic Corporation's sales data.

14.

Every aggrieved consumer suffered injuries as alleged in this complaint directly and proximately caused by Sonic Corporation's negligent failure to adequately protect its database from unauthorized access by third-party hackers and failure to notify consumers that their information was compromised in the most expeditious manner possible.

15.

The class is so numerous that joinder is impracticable. Upon information and belief, the class includes 5,000,000 consumers based on advertisements selling Sonic Corporation's stolen information in underground cybercrime stores.

16.

Common questions of fact and law predominate over any questions affecting only individual class members. Common questions include whether plaintiffs and class members are entitled to equitable relief, whether Sonic Corporation acted negligently, and whether plaintiffs and class members are entitled to recover money damages.

17.

Plaintiffs' claims are typical of the claims of the class because each suffered risk of loss or credit harm or identity theft or economic losses caused by Sonic Corporation's negligent failure to safeguard their credit and debit card information, the injuries suffered by plaintiffs and the class members are identical (i.e. the costs to monitor and repair their credit through a third-party service for at least 24 months, the amounts of economic losses caused by identity theft and credit harm and unauthorized use of credit and debit cards), and plaintiffs' claims for relief are based upon the same legal theories as are the claims of the other class members. Plaintiffs will fairly and adequately protect and represent the interests of the class because their claims are typical of the claims of the class, they are represented by nationally known and locally respected attorneys who have experience handling class action litigation and consumer protection cases who are qualified and competent, and who will vigorously prosecute this

litigation, and their interests are not antagonistic or in conflict with the interests of the class.

18.

A class action is superior to other methods for fair and efficient adjudication of this case because common questions of law and fact predominate over other factors affecting only individual members, as far as plaintiffs know, no class action that purports to include consumers suffering the same injury has been commenced in Oregon, individual class members have little interest in controlling the litigation, due to the high cost of actions, the relatively small amounts of damages, and because plaintiffs and their attorneys will vigorously pursue the claims. The forum is desirable because the bulk of consumers in Oregon who suffered injury caused by Sonic Corporation's negligence reside in the Portland metropolitan area. A class action will be an efficient method of adjudicating the claims of the class members who have suffered relatively small damages, as a result of the same conduct by Sonic Corporation. In the aggregate, class members have claims for relief that are significant in scope relative to the expense of litigation. The availability of Sonic Corporation's consumer data will facilitate proof of class claims, processing class claims, and distributions of any recoveries.

19.

CLASS CLAIM FOR RELIEF

NEGLIGENCE

As alleged in this complaint, Sonic Corporation undertook care of credit and debit card information belonging to plaintiffs and the putative class, then breached its legal duty by failing to maintain adequate technological safeguards, falling below the standard of care in the technological industry, directly and proximately causing foreseeable risk of data loss and credit harm and identity theft and other economic losses, in amounts to be decided by the jury. Sonic Corporation's failure to comply with laws requiring it to notify consumers of its data breach in the most expeditious manner possible constituted negligence per se.

20.

Plaintiffs and the class are entitled to equitable relief in the form of an accounting of exactly how their credit and debit card information was accessed without authorization by third parties, restitution, and unless agreed upon by Sonic Corporation, an order to preserve all documents and information (and electronically stored information) pertaining to this case.

21.

Demand for jury trial.

PRAYER FOR RELIEF

Plaintiffs seek relief for themselves and the proposed class as follows:

- A.** Unless agreed upon by Sonic Corporation, an order to preserve all documents and information (and electronically stored information) pertaining to this case,
- B.** An order certifying this matter as a class action,
- C.** Judgment against Sonic Corporation for fair compensation in an amount to be decided by the jury, and costs,
- D.** And other relief the Court deems necessary.

September 27, 2017

RESPECTFULLY FILED,

s/ Michael Fuller

Michael Fuller, OSB No. 09357

Lead Attorney for Plaintiffs

Olsen Daines PC

US Bancorp Tower

111 SW 5th Ave., Suite 3150

Portland, Oregon 97204

michael@underdoglawyer.com

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